

REMARKS

Reconsideration and withdrawal of the rejections of the claimed invention is respectfully requested in view of the amendments, remarks and enclosures herewith, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1, 2, 4-14, 16 and 17 are pending in this application. The limitation of claim 3 has been incorporated into claim 1. Claims 7 and 8 have been amended so as to provide proper antecedent basis for the limitation. No new matter has been added by this amendment.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. NOTICE OF IDS FILING

Applicants are also submitting an IDS concurrently with this response.

III. THE 35 U.S.C. 103(a) REJECTION HAS BEEN OVERCOME

Claims 1-14, 16 and 17 were rejected as allegedly being obvious by Paul (U.S. Patent 5,556,030) in view of Fischel-Ghodsian (U.S. Patent 5,071,704 – “Fischel”). The applicants request reconsideration of this rejection for the following reasons.

In order to establish obviousness, all of the claim limitations must be taught or suggested by the combination of references or knowledge generally accepted in the art. *See MPEP 2143.03*. However, the combination of Paul and Fischel does not meet this standard.

The final rejection acknowledged that Paul does not disclose the second control element as being a film and relies on the teaching of Fischel to remedy this deficiency (“Fischel-Ghodsian teaches a dispenser for controlled release of volatile substances comprising a reservoir 22, a first control element 24, and a second control element 28 in the form of a thin permeable film.”). However, this characterization of Fischel is incorrect and does not match the actual teaching of Fischel.

The actual text from Fischel which is believed to have been relied upon in the final rejection appears in col. 6, lines 58-68:

“FIG. 2 illustrates another embodiment of the present invention. FIG. 2 illustrates a laminate that consists of four layers: a reservoir layer 22, a **diffusion rate limiting membrane layer 24**, an impermeable backing layer 26, and a decorative layer 28. The reservoir layer 22, rate limiting membrane layer 24, and impermeable backing layer 26 have properties and characteristics as described for FIG. 1. **Decorative layer 28** is preferably a thin permeable polymeric material which **will readily transmit the active compound** and at the same time provide an ornamental quality to the controlled release device.” (emphasis added)

The only control membrane in Fischel is layer 24 (“diffusion rate limiting membrane layer”); there is no second control membrane in Fischel. The decorative layer 28 from Fischel has no control function (or in Fischel’s own vernacular, does not serve as a diffusion rate limiting membrane); it must readily transmit the active compound and only serves to provide an ornamental quality to their device.

In addition, for claim 1 as amended (which incorporated the limitation of previous claim 3) Fischel does not teach a film which is comprised of material which is *impermeable* to the active compound. As noted in the above passage, Fischel teaches the exact opposite, i.e. a thin *permeable* polymeric material.

For these reasons, the combination of Paul and Fischel do not teach all of the limitation of the applicants’ claimed invention and does not render the applicants’ claimed invention to be prima facie obvious.

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution.

Respectfully submitted,
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